

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0193P

Financial Institutions Tax

For the Short Period ended July 1, 2004

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment resulting from the filing of a short period return ended July 1, 2004. The taxpayer is an out-of-state taxpayer.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer misunderstood the due date for a merger situation.

The taxpayer merged into a group of companies on July 1, 2004. For federal purposes, a consolidated income tax return was filed with a calendar year end. For Indiana purposes the taxpayer did not file consolidated, but filed a short period Financial Institutions Tax (FIT) return with an end date of July 1, 2004.

With regard to the due date, the taxpayer reviewed the FIT instructions for guidelines on a merger situation. The due date per the FIT instructions is November 15, 2004. The FIT instructions are silent to a merger situation.

According to the taxpayer, as the FIT instructions were silent concerning a merger situation, the taxpayer relied on the IT20 instructions. According to the taxpayer, the

IT20 instructions allowed for a calendar year-end due date and the estimate tax payment dates associated with a calendar year-end. The taxpayer paid an estimated tax on December 15, 2004 (one month late) that was large enough to cover the gain from the short period return.

The Department finds exception to the IT20 argument. The due date according to the IT20 instructions, Indiana Code, and Indiana Regulations, is the due date for a short period return, which, in this case, is November 15, 2004. Therefore, the taxpayer's argument fails.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.